

The complaint

Mr H complains about the quality of a car supplied to him by Billing Finance Limited (“BFL”)

What happened

Mr H acquired a car under a 60 month hire purchase agreement with BFL in September 2022. The car cost around £10,995. Mr H paid a deposit payment of £500. Under the agreement, Mr H was required to make 59 payments of £287.74, followed by a final payment of £288.74 if he wanted to keep the car. At the time of supply, the car was around nine years old and the mileage was around 34,300. The car was supplied by a dealership I’ll refer to as “D”.

In March 2023, Mr H complained to BFL. He said there was a fault with the transmission, the gearbox, there was a clunking noise and he had experienced difficulty whilst driving. Mr H said he had been advised there was a fault with the transfer box and the front differential bearing. Mr H told BFL that his warranty provider had agreed to pay £1,000 towards the cost of the repair, but the repair quote was £2,400. Mr H returned the car to D.

BFL obtained an independent report from a company I’ll refer to as “M”. The mileage at the time was 44,672. M said the car had no fuel in it, there was no oil on the dipstick and there was a large crack on the windscreen. It said as a result of these issues, it couldn’t road test the car. M said no relevant fault codes were present, there was no evidence of any oil leaks and it was unable to establish a defect with the front differential at the time of inspection. This was due to M not being able to test the functionality of the differential as it couldn’t complete a road test. It said it suspected a fault with the car was most likely to have occurred due to wear and deterioration considering the car’s age.

BFL issued its response to Mr H’s complaint in May 2023. It said Mr H had told it that he raised concerns with the car one month after he was supplied it and that he had put engine oil and fuel into the car three weeks prior to returning the car to D. BFL said it had been told the car was delivered to D with two miles remaining for fuel, a cracked windscreen and insufficient engine oil. It also said it had asked M to provide further information but whilst waiting for this information, Mr H had contacted it to let it know he wanted to close his complaint. It didn’t uphold Mr H’s complaint.

Unhappy, Mr H referred a complaint to this service in June 2023. He said he had the car for a few weeks and then told D that there was an intermittent problem. He said he told D there would be no power from the accelerator. He said when it reoccurred he would contact D but the owner would refuse to speak to him claiming he was busy. Mr H says the warranty company found an issue with the transfer box and agreed to contribute £1,000 towards the repair. He said D agreed to fix the car for £1,000. Mr H said M completed a report by just looking at the car, rather than having it taken apart. He also said he had to pay for the car to be transferred to another garage to pay for a new disc and pads as the garage left the car sitting for six weeks. He said he had a receipt for an oil top up from four days before the car went to D. This service asked Mr H to provide a complaint form so we could consider the complaint, but we didn’t hear from him again in 2023.

In April 2024, Mr H said the car’s engine had blown and a new engine was required. BFL asked Mr H to provide evidence to support his complaint. Mr H provided it with a copy of

fault codes and a picture of the dashboard. Mr H told BFL there was an issue with the timing chain. An inspection was carried out by a garage I'll refer to as "P".

In May 2024, Mr H complained to BFL again. It said there was no oil registering on the dipstick, there was a lack of compression and loss of valve timing, the lack of oil would have an adverse effect on the timing chain and this was due to stretching and wear of the timing chain.

BFL issued its response to Mr H's complaint and said 18 months had passed and a further 25,312 miles had been covered in the car. It didn't uphold Mr H's complaint as it said the car not having oil would have contributed to the current issues. It provided Mr H options to settle the agreement in full, to voluntarily terminate the agreement or allow him to sell the car and put the proceeds towards the settlement amount. It also said it would allow Mr H to only pay the amount financed, if he could provide evidence of servicing and maintenance.

Following this, Mr H complained and said BFL:

- provided more information by email than it did when leaving a voicemail
- requested further communication with him to be carried out by email
- it didn't tell him about his right to voluntarily terminate his agreement
- his previous complaint regarding the quality of the car was mishandled and he was disappointed with M's report;
- he was unhappy with the agent's behavior and he felt blamed for his financial situation
- he was told P's inspection was scheduled for 3 May 2024 but on 2 May 2024, the inspection had already been conducted and BFL shared the results with him
- BFL's hold messages and communications emphasised its commitment to helping customers but he didn't feel he had received adequate help or support
- He had informed BFL of his financial difficulties during a previous call and a callback was promised, but it didn't do this and his monthly instalment had since become due.

BFL responded and said:

- it didn't want to inadvertently disclose information on a voicemail
- it would accommodate Mr H's preference for phone contact
- it had let Mr H know about his option to voluntarily terminate the agreement on three occasions
- given the car's poor condition, the value would have been low and so voluntary termination was unlikely to be suitable
- it was now too late for Mr H to bring a complaint about the previous agreement
- it acknowledged the call with the agent didn't meet its usual standards. BFL apologised and said it had provided training and necessary feedback
- it found no evidence to show that Mr H was informed P's inspection would take place on 3 May 2024
- it had offered numerous options and support to Mr H
- it couldn't offer Mr H a further payment deferral and it attempted to contact Mr H via phone to discuss this. It left a voicemail asking Mr H to contact it.

In May 2024, Mr H contacted this service and reiterated his complaint from June 2023. He said a warning indicator for low engine pressure led to another breakdown, the timing chain

had failed and he reiterated his complaints to BFL in May 2024. He said the series of events had led to significant financial strain and emotional distress due to the continuous car issues, poor service from D and unsatisfactory handling by BFL.

Mr H said he wasn't able to use the car but he continued to fulfil his obligations, he incurred substantial additional costs to commute to and from work, he paid a significant amount towards the £3,500 repair cost for the transfer box, he had to bear the cost of transporting the car to and from different garages, the brakes rusted after the car sat idle for two months whilst waiting an inspection from M, he obtained two full services and two carbon cleans. He said all of this had placed a considerable financial strain on his resources.

Our investigator looked into the complaint and said the car supplied to Mr H was of satisfactory quality. He said that two separate independent inspections found that the faults with the car weren't present or developing at the point the car was supplied. He said it appeared the car was run without enough engine oil at times, but it appeared the issues occurred due to age related wear and tear.

Mr H disagreed. He said prior to M's inspection, he had an oil service carried out and he had receipts showing this. He said a transfer box was a closed unit that could only be inspected if it was taken apart. But despite this, D didn't get the car ready for M to be able to inspect the car before the inspection. He said he maintained the car correctly.

Our investigator also went back and considered the service issues Mr H had mentioned and asked for further information in relation to an oil service. Our investigator said:

- Mr H wasn't required to be present when an inspection report was carried out to confirm its independence. He said the inspector's conclusions were persuasive and he didn't think BFL acted unfairly by relying on its conclusions
- he didn't think BFL telling Mr H about voluntary termination would have persuaded him to voluntarily terminate the agreement in 2023, due to the significant cost. He said in 2024, BFL mentioned voluntary termination a number of times
- he agreed that BFL's agent seemed flustered at times during a call in May 2024 and that the call could have been handled better. He said he felt the apology BFL provided was fair in the circumstances
- there was no evidence to suggest that Mr H was told the inspection would take place on 3 May 2024
- he didn't think Mr H was disadvantaged during the four days that BFL said it couldn't provide him with call transcripts
- he wasn't persuaded that BFL missed a call back regarding following Mr H asking it for a payment deferral
- he understood Mr H's frustration about BFL providing limited information by voicemail, but he didn't think BFL had treated him unfairly
- he wasn't persuaded that BFL didn't provide adequate help or support in its hold messages.

In relation to the quality of the car, our investigator said Mr H's testimony that the car lost significant oil at the point of failure was plausible. This was because the oil service records didn't suggest Mr H was improperly maintaining the car. Our investigator said he wouldn't expect a properly maintained engine to fail after 59,000 miles. So he said he didn't think the car was durable and so, it wasn't of satisfactory quality. He said BFL should cover the cost of repairs, refund any rentals since 2 April 2024 and pay Mr H £350 for the distress and inconvenience caused.

Mr H agreed but BFL disagreed. It said the timing chain was a serviceable item and subject to wear and tear. It said Mr H had covered 25,319 miles in the car since September 2022

and whilst a service was carried out at 45,625 miles, the car failed after covering a further 13,987 miles. It said this was 1,987 miles outside of the recommended 12,000 miles for an oil change. It also said an internet search showed that a timing chain would generally last between 90,000 miles and nine years and the car in this case was 11 years old.

Our investigator maintained that the car wasn't sufficiently durable despite it being overdue an oil service by 1,987 miles. He said a timing chain failure could cause significant oil loss and so, this would explain why there was no oil in the car at the time of inspection.

As BFL remains in disagreement, the case has been passed to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Where evidence is incomplete, inconsistent or contradictory, I reach my view on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

I've read and considered the whole file and acknowledge that Mr H has raised a number of different complaint points. I've concentrated on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it – but because I don't think I need to comment on it in order to reach what I think is the right outcome. The rules of this service allow me to do this.

In this case, Mr H has complained about the quality of the car and he raised a number of service issues. Mr H didn't disagree with our investigator's findings on the service issues and neither did BFL. So, I haven't considered the service issues as part of this decision.

Instead, what I need to decide in this case is whether the car supplied to Mr H was of satisfactory quality. If I don't think it was, I'll need to think what's fair, if anything, to put things right.

The finance agreement in this case is a regulated hire purchase agreement. So our service is able to consider complaints relating to it. BFL is the supplier of the car under this type of agreement and so is responsible for dealing with a complaint about its quality.

The Consumer Rights Act 2015 ("CRA") covers hire purchase agreements. Under a hire purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

Mr H acquired a car that was used – so there would be different expectations compared to a new car. Having said that, the car's condition at the point of supply, should have met the standard a reasonable person would consider satisfactory, taking into account its age, mileage and price. The CRA says the aspects of the quality of the goods includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and – of particular relevance to this case - durability.

In this case, Mr H says he reported that there would be no power from the accelerator intermittently a few weeks after the car was supplied to him. Around six months after the car was supplied to Mr H, he spoke to a warranty company and through investigation, it found an internal bearing failure on the transfer box/front differential.

I've looked at the report carried out by M in March 2023. The mileage was 44,672. So by this point, Mr H had possession of the car for around six months and had travelled around 10,000 miles. The report confirms there is no oil present but also no evidence of any oil leaks or impact damage to the undertray. It said it couldn't find a fault with the front differential as it couldn't inspect it. It said the issues were likely down to wear and tear. It appears these issues were rectified by D and paid for under warranty.

Following this, the engine failed in April 2024 and P carried out an independent report. The mileage at the time was reported as 59,612. So Mr H had covered around 25,312 miles in the car and 14,940 miles since the previous faults in 2023. P noted that the timing chain had failed and the engine failed to start.

Having carefully considered this, I'm satisfied the car supplied to Mr H had a fault as P confirmed the engine and timing chain failed. I now need to consider whether these faults make the car of unsatisfactory quality.

I haven't been provided with a copy of the handbook for the car which confirms the timing chain replacement intervals. However, through some of the internet links provided by BFL, I've found that one of these links' states:

"Note: Although the (manufacturer name) interval for timing belt renewal is 125 000 miles, it is strongly recommended that the timing belt renewal interval is reduced to 60 000 miles. The actual renewal interval is therefore up to the individual owner, but bear in mind that severe engine damage will result if the belt breaks."

I note in P's report, it states, *"Some engines have a timing belt, which require periodic replacement due to general wear, however, this engine, like many others, has a timing chain, which does not have a replacement interval, however, is heavily reliant on a constant clean feed of engine oil being present"*.

In this case, the timing belt failed at around 60,000 miles. Whilst I appreciate this website suggests that the timing belt or chain is reduced to 60,000 miles, this is simply a recommendation. It states that the manufacturer interval for the timing belt/chain renewal is every 125,000 miles or as P has said, there was no replacement interval.

I note that BFL said that the car hadn't been maintained as it should have and that another internet guide stated the oil should be changed every 12,000 miles or two years, whichever comes first. However, the manufacturer's official website states:

"We recommended booking an Engine Oil Service every two years (or 18,000 miles – whichever comes first)."

The car cut out in April 2024 at around 59,612 miles. The next service was due on the car in July 2025 or when the car had travelled around 63,625 miles, whichever was earlier. So taking into account the official manufacturer servicing recommendations and supporting information Mr H has provided, I'm satisfied he had the car serviced as he was expected to.

I understand that both M and P's inspections showed that the car had no oil in it. But for M's inspection, which was carried out when the car had completed around 44,000 miles, Mr H has shown he had an oil service carried out at around 36,000 miles, which was only 8,000 miles earlier. It seems there has been some kind of progressive or sudden oil leak at around the time of both inspections, as the oil was changed initially at an 8,000 mile interval and then around a 14,000 mile interval, both below the recommended interval of 18,000 miles.

I've also seen a copy of the diagnostic report carried out by P, this doesn't confirm that there are any fault codes stored in relation to the engine oil or that there were any alerts that the engine oil needed topping up. So, I'm persuaded that it's more likely than not, that there was a sudden failure of the timing chain which led to the engine failing.

The car was around nine years old at the time it was supplied and the mileage was around 34,300. One of the considerations of whether goods are of satisfactory quality is durability. Here, the timing chain failed and the engine needed repairing when the car was around eleven years old and at around 60,000 miles.

Having thought about this, I think a reasonable person would consider that a timing chain would last longer than this. I appreciate that the car was able to travel around 26,000 miles in before it cut out, but the timing chain is a part which a reasonable person would expect to

last a considerable amount of time. And it wouldn't be reasonably expected that a car would suffer a major component failure, without any prior notification, considering the age and mileage at the time the car failed. And so, given Mr H maintained the car as he was expected to, I don't think the timing chain was sufficiently durable. It follows that I don't think the car was of satisfactory quality when it was supplied to Mr H.

I've gone on to think about what BFL needs to do to put things right.

I'm satisfied that BFL is entitled to repair the car and so, it should arrange to repair the car at no further cost to Mr H. Alternatively, if it cannot do this, Mr H should obtain a couple of quotes for the cost of the repairs and BFL can choose which quote to pay. It may decide to pay the chosen dealer directly. If the car is uneconomical to repair, it will be down to BFL to decide whether to accept rejection of the car instead. If it does this, it should return Mr H's deposit, with applicable interest.

The car failed in April 2024. The car hasn't been used since then as it is inoperable due to the engine failure. As Mr H hasn't been able to use the car since April 2024, BFL should pay Mr H any payments he's made towards his agreement since that date and up until the car is repaired. If a courtesy car is provided whilst the car is repaired, then BFL will be entitled to retain any payments due under the agreement whilst Mr H is provided with a courtesy car.

I've also considered the impact of Mr H being without a car for around eight months. Mr H has detailed his medical conditions which he has said are exacerbated by stress. He said due to the issues with the car, he was admitted to hospital. He also told this service he had to change jobs as he couldn't maintain paying towards the agreement and afford to pay the cost of commuting to his previous job.

I'm sorry to hear about Mr H's personal and medical circumstances. Having considered the impact Mr H has detailed, I'm persuaded he was caused distress and inconvenience as a result of being without a car for eight months. And so I think BFL should pay Mr H £350 to reflect the distress and inconvenience caused.

My final decision

My final decision is that I uphold Mr H's complaint. I instruct Billing Finance Limited to put things right by doing the following:

- Arrange and pay for the cost of the repairs highlighted in P's report of April 2024, as directed above;
- Reimburse Mr H the cost of any rentals paid after 2 April 2024 when the car failed, up until the car is repaired, as directed above;
- Pay Mr H 8% simple interest on these amounts from the date of each payment until the date of settlement;*
- Pay Mr H £350 for the distress and inconvenience caused;** and
- Amend any adverse information reported to credit reference agencies about this hire purchase agreement.

*If Billing Finance Limited considers that it is required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr H how much it's taken off. It should also give Mr H a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

**If Billing Finance Limited does not pay this £350 compensation for distress and inconvenience within 28 days of the date on which we tell it Mr H accepts my final decision then it must also pay 8% simple yearly interest on this from the date of my final decision to the date of payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 January 2025.

Sonia Ahmed
Ombudsman